**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

Criminal Revision No.1583 of 2002

Date of Decision: May 17, 2007

Om Kumar Dhankar

...Petitioner

**VERSUS**

State of Haryana and another

...Respondents

**CORAM: HON'BLE MR.JUSTICE RANJIT SINGH**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present:** Mr.D.S.Nalwa, Advocate,
for the petitioner.

Mr.Yashwinder Singh, AAG, Haryana,
for the State.

Mr.Ashit Malik, Advocate,
for respondent No.2.

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***RANJIT SINGH, J.***

R.C.Mittal, respondent No.2, who was then working as Deputy Excise & Taxation Commissioner, Gurgaon (East), was summoned to face trial under Sections 420, 406 and 161 IPC on a complaint made by the petitioner, a Transporter of Gurgaon. The revision filed by respondent No.2, impugning the summoning order, was allowed by Addl.Sessions Judge, Gurgaon and the criminal complaint filed by the petitioner was dismissed. The petitioner has filed

the present revision petition against the said order.

The facts, in brief, are that the buses of the petitioner running under the name and style of M/s Chaudhary Bus Service and given on contract basis, were impounded under the Motor Vehicles Act. When the petitioner contacted respondent No.2, who was working in the Taxation Department, he told him that the buses were impounded because of non-payment of passenger tax. Respondent No.2 asked the petitioner to deposit a sum of Rs.two lacs at his residence for release of the buses. The petitioner allegedly deposited Rs.1,50,000/- at the residence of respondent No.2 at 1.45 P.M. On 1.5.2000. Petitioner states that respondent No.2 promised to issue receipt from the office. When he visited the office at 4.00 P.M., the clerk told him that two of the impounded buses have been released. In the evening, the petitioner received a call on his Mobile phone from Mr.Kashyap requiring him to pay remaining amount of Rs.50,000/-, so that the third bus could also be released. The petitioner accordingly paid Rs.50,000/- at 9.30 P.M. at the residence of respondent No.2 and thus the third bus was also released. Despite repeated visits to the office of the respondent, the petitioner was not supplied the receipt. He also wrote a letter on 30.10.2000 requiring him to issue receipt. From the reply sent by the respondent, the petitioner learnt that the amount paid by him was not appropriated by him towards passengers tax and in fact stood misappropriated indicating it to be a case of an illegal gratification. He accordingly filed criminal complaint under Sections 420, 406, 427, 161 IPC and Section 13 (1) (D) of the Prevention of Corruption Act. On the basis of preliminary evidence, respondent No.2 was summoned under

Sections 420, 406 and 161 IPC. Respondent impugned the said order by filing a revision petition, which was allowed by Addl.Sessions Judge, as stated above, against which the petitioner has filed the present revision petition.

The grounds pleaded in the revision filed by respondent No.2 were that prior sanction of the Government was needed for prosecution of the respondent and there was delay of more than six months in filing of the complaint, which would show that the story projected was concocted one to malign the reputation of a honest officer. It was further pleaded that Sections 406 and 420 IPC are mutually exclusive and the summoning order passed by the Magistrate would be bad on this ground, besides stating that Section 161 IPC stood repealed and as such summoning of respondent No.2 under the said Section could not be sustained. On the other hand, it was submitted on behalf of the petitioner that the act of taking this amount by the respondent would not fall within the ambit of his official duty, so as to attract the provisions of Section 197 Cr.P.C. and hence, requirement of sanction would not arise in this case.

Mr.D.S.Nalwa, the counsel appearing for the petitioner would submit that the manner in which respondent No.2 took money from the petitioner would not call for requirement of sanction under Section 197 Cr.P.C. for his prosecution. The counsel would further contend that no sanction for prosecuting the respondent under Sections 406 and 420 IPC would be needed. As per the counsel, the delay in filing complaint was sufficiently explained by the petitioner and as such quashing of the summoning order on this ground was not justified.

Mr.Ashit Malik, the counsel appearing for respondent No.2, would, however, controvert these submissions. He submits that even as per case set up by the petitioner, the amount of Rs.two lacs was paid as a tax to respondent No.2 and as such conceded position is that respondent No.2 had acted in discharge of his official duties as a public servant. As per the counsel, sanction as such, would be needed for prosecuting respondent No.2. He would seriously join issue with the counsel for the petitioner and would submit that no valid explanation is forthcoming justifying the delay of six months on the part of the petitioner to file this complaint.

I have heard the counsel for the parties.

Mr.Nalwa, by referring to the decision of ***Parkash Singh Badal and Anr. Vs. State of Punjab and Ors. 2007(1) RCR (Criminal) 1,*** submits that the sanction for prosecution of the respondent is not needed. The issue regarding need of sanction for prosecuting a public servant, or in which cases it is needed is, by now, almost settled. The Hon'ble Supreme Court has gone in detail in regard to the applicability of Section 197 Cr.P.C. in the case of ***Parkash Singh Badal (supra)***. Referring to ***Bakhshish Singh Brar Vs. Smt.Gurmej Kaur and Anr., AIR 1988 SC 257***, the court emphasized the need of balance between protection to the officers and that of the citizens. As noticed by Hon'ble Supreme Court, the protection given under this section is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as a public servant. It is,

thus, noticed that when the public servant is purporting to act as such, he still would be under the statutory protection as provided under Section 197 Cr.P.C. In ***P.Arulswami Vs. State of Madras,*** AIR 1967 Supreme Court 776, it was observed as under:-

> "It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duty so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable."

In ***Matajog Dubey v. H.C.Bhari, AIR 1956 SC 44***, the Court was to observe that the offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty...there must be a reasonable connection between the act and the discharge

of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. In ***P.K.Pradhan v. State of Sikkim, 2001(3) RCR (Crl.) 835 (SC)***, it was, inter-alia, held :-

> "The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is prohibition imposed by the Statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: "any offfence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty." The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does

not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly, I excess of the needs and requirements of the situation."

The case set up by the petitioner is that he had paid this amount to respondent No.2 as a tax. It is not his case that this amount was paid as a bribe. Conceded position, as such, is that respondent had acted in discharge of his official duties. If the allegation is that respondent had accepted this money as a tax, obviously he had acted in discharge of his official duties as a public servant inviting the requirement of sanction. Reference can be made to the case of ***Rakesh Kumar Mishra Vs. State of Bihar and others, 2006(1) Apex Criminal Judgements 175***, where Hon'ble Supreme Court held that no court can entertain complaint or take notice of a complaint except with previous sanction of the competent authority when the offence committed by public servant is in discharge of his official duty. The court held that very cognizance is barred and that the complaint cannot be taken notice of. In this very judgment, the Hon'ble Supreme Court went on to notice that a police officer using force in discharge of his official duty, which constituted an offence, the sanction is needed for prosecution, but such sanction would not be required if the same officer uses force in the course of service, but not in discharge of his official duty. It cannot be denied

that the offence allegedly committed by respondent No.2 was committed by him in the course of his service as part of his official duty. In the case of ***Rakesh Kumar Mishra (supra)***, the search was made of the house without warrant, but still it was held that this sanction would be needed as the act/omission was done by officer concerned in connection with the official duty performed by him. Reference can also be made to the case of ***B.Saha and others v. M.S.Kochar, 1979(4) SCC 177*** to understand difference between the expression, `any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty'. It was held as under:-

> “The words `any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the Section will be rendered altogether sterile, for, `it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act

constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision."

The above position of law appears to answer the objection of the counsel for the petitioner that sanction would not be a requirement when allegation of cheating or breach of trust is made. Basis of this objection is the observation of the Hon'ble Supreme Court in ***Parkash Singh Badal's case (supra)*** that such offences by their very nature can not be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. It is further observed that in such cases, official status only provides opportunity for commission of offence. As per ***B.Saha's case (supra),*** the words `any offence' is not to be construed narrowly as that can result in making the sanction totally sterile. A right approach in such cases is between two extreme as noted in ***B.Saha's case (supra).*** Here the act constituting an offence directly and reasonably is connected with the official duty, as is the case set up by the petitioner, making the requirement of sanction of prosecution essential having regard to the facts in this case. The act of cheating or breach of trust as alleged and even if made out in this case are inextricably mingled with the official duty of the petitioner to be considered severable to call for dispensing with the requirement of sanction. These are directly connected with the call of his official duties as can be seen from the allegations made.

In view of the law and the factual position, noticed above, I am inclined to hold that respondent No.2 in this case has acted or purported to act in discharge of his official duties, while acting as a

public servant and this is even the case set up by the petitioner. Accordingly, sanction would be essential for his prosecution for this offence. Even otherwise, the petitioner is not able to advance any justifiable reasons for filing this complaint after a lapse of six months. No substantial submissions were made by the counsel for the petitioner to contest the objection that Sections 406 and 420 IPC are mutually exclusive. Accordingly, I do not find any infirmity in the impugned order and am of the view that no case for interference is made out in the present revision petition, which is accordingly dismissed.

May 17, 2007 ( RANJIT SINGH )
ramesh JUDGE